

IN THE HIGH COURT OF MANIPUR
AT IMPHAL
W.P. (C) No. 390 of 2019

Langonjam Ibohal, aged about 68 years old, S/o (L) L. Tiken of Khundrakpam Makha Leikai, P.O. Pangei Bazar and P.S. Heingang, Imphal East District, Manipur – 795001.

... Petitioner

-Versus-

1. The State of Manipur through the Special Secretary/ Principal Secretary/ Commissioner (Hr. & Technical Education), Government of Manipur, Secretariat Building, P.O. & P.S. Imphal, District, Imphal West, Manipur – 795001.
2. The Director of University & Higher Education, Government of Manipur, Directorate of University & Higher Education, Manipur, Nityaipat Chuthek, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
3. The Director (Univ. & Hr. Education), Manipur, Chairman, Caretaker Governing Body, Naorem Birahari College, Khundrakpam, Directorate of University & Higher Education, Manipur, Nityaipat Chuthek, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
4. Shri L. Iboyaima Singh, i/c Joint Director (Univ. & Hr. Edn.), Manipur, District, Manipur – 795001, Member, Caretaker Governing Body, Naorem Birahari College, Khundrakpam, Directorate of University & Higher Education, Manipur, Nityaipat Chuthek, P.O. & P.S., Imphal, Imphal West – 795001.
5. Shri P. Shantikumar Singh, OSD (Univ. & Hr. Edn.), Manipur, Chairman, Caretaker Governing Body, Naorem Birahari College, Khundrakpam, Directorate of University & Higher Education, Manipur, Nityaipat Chuthek, P.O. & P.S. Imphal, Imphal West – 795001.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioner :: Shri H.S. Paonam, Sr. Advocate.
For the respondents :: Shri H. Debendra, Govt. Advocate
Date of Hearing :: **27-02-2020**
Date of Judgment & Order :: **19-03-2020**

JUDGMENT AND ORDER

[1] Heard Shri H.S. Paonam, learned Senior Advocate appearing for the petitioner and Shri H. Debendra, learned Government Advocate appearing for the State respondents.

[2] The validity and correctness of the orders dated 29-04-2019 issued by the Commissioner (Hr. & Tech. Edn.), Government of Manipur and the Special Secretary (Hr. & Tech. Edn.), Government of Manipur respectively are under challenge in this writ petition.

[3.1] According to the petitioner, he is the Secretary of the Governing Body, Naorem Birahari College, Khundrakpam (hereinafter referred to as "**the College**") which was dissolved vide order dated 29-04-2019 issued by the Commissioner (Hr. & Tech. Edn.), Government of Manipur. The College was upgraded as the Government Aided College vide order dated 19-12-2016 along with four other private Colleges.

[3.2] The Governing Body of the College was constituted vide order dated 05-06-2017 issued by the Director (Univ. & Hr. Edn.), Government of Manipur for a period of three years or till the implementation of the Manipur Higher Education Code for Aided Colleges, 2016. By another

order dated 15-06-2017, the Government of Manipur accorded approval to the newly constituted Governing Body with the present petitioner as the Secretary thereof.

[3.3] Some Teaching and Non-Teaching staff of the College submitted a representation dated 22-03-2018 to the Hon'ble Minister (Education), Manipur against the Governing Body regarding administrative failure, fund mismanagement, financial indiscipline, etc. Thereafter, an Inspection Team was constituted by the Director (Edn./U), Government of Manipur to look into the allegations vide its order dated 23-07-2018. The Governing Body submitted its clarification as regards the allegations made in the said representation vide its letter dated 28-08-2018. But the Inspection Team continued with the enquiry and after considering the relevant documents relied upon by the staff and other available records from the College and the Directorate of University and Higher Education along with the comment/ report of the concerned officer of the Directorate of University and Higher Education, it submitted its findings vide its letter dated 04-09-2018. After about six months there from, the Director of University and Higher Education served a notice dated 12-03-2019 upon the Governing Body directing it to submit a written reply/ explanation to each of the findings of the said report. In response thereto, the Governing Body submitted its parawise reply vide its letter dated 23-03-2019 praying for treating the earlier clarification given by it vide letter dated 28-08-2018 to be part of the reply.

[3.4] Surprisingly, during the enforcement of the Model Code of Conduct issued by the Election Commission of India in relation to the National Lok Sabha Election and on political pressure, the then Commissioner (Hr. & Tech. Edn.), Government of Manipur issued an order dated 24-04-2019 dissolving the Governing Body, followed by another order dated 29-04-2019 constituting a Caretaker Governing Body, just one day before his retirement from service, on attaining the age of superannuation. Being aggrieved by the said orders, the instant writ petition has been filed by the petitioner.

[4] An affidavit on behalf of the respondent Nos.1 and 2 has been filed stating that there is no illegality in the Government order dated 29-04-2019 which was issued as per the findings submitted by the Directorate of University & Higher Education, Government of Manipur vide its letter dated 15-04-2019. The said order was issued by invoking the provisions of Rule 27(d) of the Manipur Education Code, 1982. In its report, the Inspection Team of the Directorate of University & Higher Education made observations and comments on each and every allegation mentioned in the representation and it was observed by it that most of the allegations mentioned in the representation were true and not sufficiently clarified by the Governing Body. Since the matter did not figure in the list of Do's and Don'ts of the Model Code of Conduct issued by the Election Commission of India, there was no question of violation of it while dissolving the Governing Body as per the provisions of the Manipur Education Code, 1982. The notice dated 12-03-2019 issued by

the Director of University and Higher Education was a show cause notice as it was meant to provide an opportunity to the Secretary, Governing Body to furnish its reply and explanation as defence in respect of the allegations labeled against it. The expression "Government" means the Government of Manipur and the Government of Manipur reserved its right to dissolve the existing Governing Body of the College in case of gross mismanagement provided a caretaker Governing Body is constituted by it. An additional affidavit also has been filed on behalf of the respondent Nos.1 and 2 stating that the provisions under Section 4, Rule 2(a) have been wrongly printed as "The Government means the Directorate of Education, Government of Manipur." It is a printing mistake and the correct provision, since the constitution and framing of the rule originally in 1968 which has been in force w.e.f. 01-04-1966, is as "Government" means Government of Manipur. There is no amendment in respect of the provision of Rule 2(a) of the General Principles and conditions governing the payment of grant-in-aid in the Aided Colleges in the State of Manipur.

[5] From the pleadings as aforesaid, three points have emerged for consideration by this Court - one, relating to the principles of natural justice; two, relating to the interpretation of General Principles and Conditions governing payment of grant-in-aid in the Aided Colleges in the State of Manipur and three, relating to the application of the Election Code of conduct.

[6] As regards the first point, it has been submitted by Shri H.S. Paonam, learned senior counsel appearing for the petitioner that before the orders dated 29-04-2019 being issued by the respondents, no show cause notice was issued to the Governing Body of the College giving an opportunity for making representation, to which it has been submitted by the Government Advocate that the notice dated 12-03-2019 directing the petitioner to submit written reply/ explanation, was issued which ought be treated as a show cause notice. The principles of natural justice are not codified law and cannot be put in a straightjacket and their application will depend upon the facts and circumstances of each case. In the present case, it is not in dispute that an inspection team was constituted pursuant to a representation making certain allegations against the Governing Body and after the inspection being carried out, a report was submitted to the Commissioner (Hr. & Tech. Education) vide letter dated 04-09-2018. The said notice dated 12-03-2019 was issued to the Governing Body to furnish its reply/ explanation to the findings arrived at by the inspection team. The rationale behind the principles of natural justice is that no one shall be condemned unheard and in other words, no action shall be taken against any person without giving him an opportunity to have a say on the proposed action, if any, to be taken against him. Along with the said notice dated 12-03-2019, a copy of the report of the inspection team was furnished to the Governing Body with the direction to submit a reply/ explanation. After the receipt of a copy of the report, the Governing Body submitted its reply/ explanation and

therefore, it cannot be said that the Governing Body was not served with a show cause notice. The issuance of the notice dated 12-03-2019 was sufficient to make the Governing Body aware of the allegations and findings arrived at by the inspection team. It is for the petitioner to give its proper reply. Considering the submissions of both the parties, this Court is of the view that there was no violation of the principles of natural justice.

[7] So far as the second point is concerned, it has been submitted by the learned counsel appearing for the petitioner that the Commissioner (Hr. & Tech. Edn.), Government of Manipur was not competent to issue the order dated 29-04-2019 dissolving the Governing Body. Under the un-amended Rule 2(a) of Section IV of Manipur Education Code, the expression “**the Government**” means the Directorate of Education, Government of Manipur. In support of his contention, he has relied upon the decisions rendered by the Hon’ble Supreme Court in **A.K. Kraipak Vs. Union of India, (1969) 2 SCC 262; Bakshi Dev Raj (I) & ors Vs. Sudheer Kumar, (2011) 8 SCC 694 and Governing Body of Mayai Lambi College, Manipur Vs. State of Manipur, 1997 (3) GLT 304**. Combating it, it has been submitted by the Government Advocate that the expression “the Government” under Rule 2(a) means the Government of Manipur and not the Directorate of Education. This mistake has occurred when the Manipur Education Code, 1982 was printed by the All Manipur Secondary School Teachers’ Association. Even the number of the gazette notification was wrongly

printed in it. His contention appears to be incorrect for the reason that a copy of the Manipur Education Code produced by the Government Advocate was a copy of it being only reprinted by the All Manipur Secondary School Teachers' Association. In order to verify the correctness, he was unable to produce a copy of the Manipur Education Code printed by the State Government nor was he able to produce the final draft which was approved by the State Government before it was printed for the first time. On the other hand, the issue whether the Commissioner (Hr. & Tech. Edn.), Government of Manipur was competent to dissolve the Government Body under the Manipur Education Code came up for consideration in Governing Body of Mayai Lambi College case (supra) wherein the Hon'ble Gauhati High Court held that the Commissioner, Government of Manipur was not competent to issue the impugned order and had usurped the powers and functions of the Directorate of Education. Paragraph 10 and 11 read as under:

“10. It is true that the competent authority has amply jurisdiction to conduct and made enquiry against the existing Governing Body to find out the truth of the allegations or about the irregularities, etc and those are to be done under the related provisions of law/ rules and guidelines for which, there is Manipur Education Code, Rule 2 (a) and Rule 27 (d) of Section IV of the Manipur Education Code the provision of which are, very much important and material in the instant case and, as such, the same are termed as hereunder:

“Rule 2.(a) The Government means the Directorate of Education, Government of Manipur.”

“Rule 27.(d) The Government reserves to itself the right of dissolving the existing Governing Body of the college in case of gross mismanagement provided that a caretaker Governing Body be constituted by the Government immediately after the dissolution to run the college until replaced by a regularly constituted Governing Body within 6 months from the date of dissolution.”

On bare perusal of these provisions laid down under the Manipur Education Code, it is known to all that the Directorate of Education, Govt. of Manipur, reserves to itself the right of dissolving the existing Governing Body of the college in case of gross mis-management.

- 11. It is also true that to whomsoever the jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised, and the grants of jurisdiction implies the grant of all powers necessary to its exercise, in other words, implied powers. At this stage, I hereby recall the legal maxim, “Cut jurisdictio data est, ea quoque concessa esse videntur, since quibus jurisdiction explicari non potest.” Here in the instant case, the impugned order placing the Governing Body of the said college under suspended animation was not passed by the Directorate of Education, Govt. of Manipur, but by the respondent No. 1 (State of Manipur). In view of the provisions of the above Rules, the respondent No. 1 has no jurisdiction and power to pass and issue the impugned order placing the Governing Body of the said college under suspended animation and moreover, the respondent No. 1 has usurped the powers and function of the Directorate of Education, Govt. of Manipur and, as such, in my opinion, it is an arbitrary and illegal action of the respondent No. 1 while passing the impugned order as in Annexure A/12 to the writ petition.”*

It has not been brought to the notice of this Court by the Government Advocate that an appeal has been preferred against the judgment and order which has been overruled by the Division Bench. In the said case, no plea was taken by the State Government that the expression “**the Government**” means the State Government and that it was wrongly printed as “the Directorate of Education, Government of Manipur”. The said judgment and order dated 02-02-1999 was delivered by the learned Single Judge about twenty years ago and the State Government appears to have not thought that it was a mistake. The stand taken by the State Government in the present case that it was a mistake, appears to be an afterthought which cannot be countenanced by this Court. Moreover, the judgment and order passed by the Hon’ble Gauhati High Court in Mayai Lambi College case appears to have attained its finality. However, it is open to the respondents to make amendments of the Manipur Education Code in accordance with law.

[8] In view of what has been held in the preceding paragraph, the third point need not be considered and in other words, there is no point of considering it. But since the learned counsel appearing for the parties have submissions thereon, this Court proposes to deal with it. It has been submitted by the counsel for the petitioner that the impugned order dated 29-04-2019 appears to have been issued under the political pressure or compulsion and moreover, it was issued while the Election Code of Conduct was in operation. His submissions may have been

correct but since no material in respect thereof, has been placed on record, it is not possible for this Court to make any observation thereon.

[9] In view of the above, the instant writ petition is allowed and consequently, the impugned orders dated 29-04-2019 issued by the Commissioner (Hr. & Tech. Edn.), Government of Manipur and the Special Secretary (Hr. & Tech. Edn.), Government of Manipur are quashed and set aside with no order as to costs.

JUDGE

FR/NFR

Devananda

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